

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Verizon Telephone Companies)	
for Forbearance Under 47 U.S.C. § 160(c))	WC Docket No. 04-440
From Title II and Computer Inquiry Rules)	
With Respect)	
To: The Commission)	
CC: Verizon		Date: February 8, 2005

VIA the ECFS

COMMENTS OF FRANCOIS D. MENARD

I respectfully submit the following comments on Petition of Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) From Title II and Computer Inquiry Rules (“the Petition”).

These comments were developed by a Canadian citizen who has a commercial interest in the removal of undue barrier to entries for Canadian firms for entering the historical territory of Verizon to provided next generation telecommunications services such as VoIP.

In these Comments, I am requesting Verizon to explain how the granting of forbearance through the Petition would serve the public interest and would assure that the commercial activities of Verizon would remain in Compliance with Chapter 13 Articles 1302 and 1303 of the North American Free Trade Agreement, copies of which are included in this document.

Based on the responses of Verizon to this request, I intend to elaborate on the necessary remedies through the filing of Reply Comments.

Introduction

1. I am in receipt of a petition dated November 10th 2004 by Verizon. I understand that Verizon wishes its mass market xDSL services to be relieved from Computer II obligations.
2. I note that pursuant to the US Administrative Procedure Act^{1,2}, **anyone** can provide comments, irrespective of national origin or country of residence.
3. I submit that the petition has broad public policy issues that transcend the boundaries of the United States as the granting of the forbearance would likely restrict competitive entry in the United States of America in the territory of Verizon by corporations under Canadian control (i.e. *Canadian firms*).
4. I am an intervener in this proceeding as the granting of the petition would cause irreparable harm to potential entry of the Canadian firms to which I have a direct or indirect commercial interest for or into.
5. A formal description of the commercial interests that I have, or may have in the future are irrelevant to the issue of whether the commercial activities of Verizon would remain in compliance with the dispositions in articles 1302 and 1303 of the North American Free Trade Agreement, should the FCC decides to grant the petition of Verizon.
6. Nonetheless, for the sole purpose of clarity, I am specifically questioning whether, upon the granting of forbearance, Verizon would have the right incentives to allow interconnection to its VoIP infrastructure on terms and conditions that are just and reasonable.
7. The motivations behind the present intervention lie in the fact that I have reasonable suspicions that Verizon will force Canadian VoIP service providers to interconnect to its VoIP service through prohibitively expensive legacy time division multiplexing PSTN interfaces rather than allow the direct termination of traffic using native VoIP technology, thereby foreclosing entry.

¹ <http://www.cybertelecom.org/faqs/apa.htm>

8. I submit that if the intention of Verizon to allow Canadian VoIP service providers to interconnect to its VoIP service through the Internet, then it has the opportunity to state its intention on the present public record and to provide details on the terms and conditions to which it would allow next-generation native VoIP-based interconnections to its facilities.

NAFTA

9. Verizon is hereby requested to detail whether its commercial operations, upon the granting of the petition, would remain in Compliance with articles 1302 and 1303 of Chapter 13³ of the North American Free Trade Agreement, which state as follows:

Article 1302: Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.
2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
 - (b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;
 - (c) perform switching, signalling and processing functions; and
 - (d) use operating protocols of their choice.
3. Each Party shall ensure that:
 - (a) the pricing of public telecommunications transport services reflects economic costs directly related to providing the services; and
 - (b) private leased circuits are available on a flat-rate pricing basis.

Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

4. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.
5. Further to Article 2101 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:
 - (a) ensure the security and confidentiality of messages; or

² http://biotech.law.lsu.edu/Courses/study_aids/adlaw/

³ <http://www.mac.doc.gov/nafta/chapter13.html>

- (b)protect the privacy of subscribers to public telecommunications transport networks or services.
6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:
 - (a)safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
 - (b)protect the technical integrity of public telecommunications transport networks or services.
 7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:
 - (a)a restriction on resale or shared use of such services;
 - (b)a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (c)a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and
 - (d)a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.
 8. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

Article 1303: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:
 - (a)any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and
 - (b)information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.
2. A Party shall not require a person providing enhanced or value-added services to:
 - (a)provide those services to the public generally;
 - (b)cost-justify its rates;
 - (c)file a tariff;
 - (d)interconnect its networks with any particular customer or network; or
 - (e)conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.
3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:
 - (a)such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or
 - (b)a monopoly to which Article 1305 applies.

10. I request that Verizon details its response pursuant to each paragraph and subparagraph of articles 1302 and 1303, with specific emphasis on not omitting to address any issues listed therein.

11. The FCC must surely realize that a gigantic canyon is emerging between the pro-competitive activities of the CRTC and the recent deregulation activities of the FCC. I am particularly puzzled by the fact that US firms deciding to enter the Canadian market would be capable of doing so on terms and conditions that are vastly better than in the converse situation.

12. The present intervener notes the dissenting comments of Commissioner Copps accompanying several of the most recent Orders of the Commission.

13. It is a fact that currently, the market share of the incumbent telephone and cable carriers in the USA remains pretty much the same than that their Canadian counterparts. This does not prevent the CRTC to continue finding parties to a duopoly as having significant market power in the fact that incumbent telephone and cable carriers control over 99% of all residential wireline broadband access facilities.

14. Given the aforementioned, I find that the position of the FCC is at odds with the one of the CRTC. I note that the proposed strategy of the FCC to de-regulate through service re-classification (such as declaring cable modem telecommunications services to be information services) rather than from clear evidence of the absence of market power, is an issue that still has yet to complete judicial review based on the fact that the US Supreme Court has granted⁴ on December 3rd 2004 the Certiorari requested by the FCC in the Brand-X case.

⁴ <http://www.supremecourtus.gov/orders/courtorders/120304pzt.pdf>

15. Finally, with specific references to the rates which Verizon currently has in place in the Verizon FCC Tariff #1, it is useful to point out that the rates included therein do not compare well at all with recently industry negotiated new wholesale pricing of Bell Canada (Bell Canada General Tariff 5410 and 5420) which the CRTC approved on an interim basis in CRTC Order 2004-418⁵.

16. The content of these General Tariffs are hereby introduced as evidence on the present public record by way of reproduction of their main pricing table and fully by way of hyper reference to their URL on the Bell Canada Tariff web site:

- Bell Canada General Tariff 5410:

<http://www.bce.ca/en/company/ourbusiness/bell/tariffs/index.php/ItemView.asp?Tariff=GT%20%20%20&Part=%20%20%205%20%20%20%20%20%20%20&Item=%205410%20%20%20%20%20>

GAS Access - Residence, each / Accès SAP – résidence, chaque	Contract Period / Durée du contrat Rate per month / Tarif mensuel			Service Charge/ Frais de service
	1 year / 1 an	2 years / 2 ans	3 years / 3 ans	
Speed 128 Kbps, each / Vitesse de 128 Kbit/s, chaque				(Note)
<500	\$ 20.50	\$ 20.00	\$ 19.50	\$ 50.00
501-1000	20.00	19.50	19.00	50.00
>1000	19.50	19.00	18.50	50.00
Speed 3.0 Mbps / Vitesse de 3 Mbit/s				
<1000	22.50	22.00	21.50	50.00
1001-2500	22.00	21.50	21.00	50.00
2501-5000	21.50	21.00	20.50	50.00
5001-7500	21.00	20.50	20.00	50.00
>7501	20.50	20.00	19.50	50.00
Speed 4.0 Mbps / Vitesse de 4 Mbit/s				
<500	30.00	29.00	28.00	50.00
501-1000	29.00	28.00	27.00	50.00
1001-2000	28.00	27.00	26.00	50.00
2001-2500	27.00	26.00	25.00	50.00
>2501	26.00	25.00	24.00	50.00

⁵ <http://www.crtc.gc.ca/archive/ENG/Orders/2004/o2004-418.htm>

- Bell Canada General Tariff 5420:

<http://www.bce.ca/en/company/ourbusiness/bell/tariffs/index.php/ItemView.asp?Tariff=GT%20%20%20&Part=%20%20%205%20%20%20%20%20%20%20&Item=%205420%20%20%20%20%20>

ADSL Aggregated High-Speed Service Provider Interface (AHSSPI) / Interface de fournisseur de services haute vitesse groupés (IFSHVG) LNPA	Contract Period / Durée du contrat Rate per month / Tarif mensuel			Service Charge/ Frais de service
	1 year / 1 an	2 years / 2 ans	3 years / 3 ans	
(See rates for ADSL AHSSPI in Item 5410. / Voir les tarifs applicables à l'IFSHVG LNPA dans l'article 5410)				
HSA Access - Residence, each / Accès AHV – résidence, chaque				
Speed 4.0 Mbps / Vitesse de 4 Mbit/s				
<500	\$ 65.00	\$ 62.50	\$ 60.00	\$ 225.00
501-1000	60.00	57.50	55.00	225.00
1001-2000	55.00	52.50	50.00	225.00
2001-2500	50.00	47.50	45.00	225.00
>2501	45.00	42.50	40.00	225.00
HSA Access – Business, each / Accès AHV – affaires, chaque				
Speed 4.0 Mbps / Vitesse de 4 Mbit/s				
<500	75.00	72.50	70.00	225.00
501-1000	70.00	67.50	65.00	225.00
1001-2000	65.00	62.50	60.00	225.00
2001-2500	60.00	57.50	55.00	225.00
>2501	55.00	52.50	50.00	225.00
Additional PVCs, each (maximum of 3)	20.00	20.00	20.00	100.00 (Note)
PVC Remapping Fee, per PVC / Frais de reconfiguration des CVP, chaque CVP	N/A	N/A	N/A	100.00

17. It is useful to note that the prices stated above are in Canadian dollars.

18. Any cursory review of FCC Tariff 1 of Verizon and comparison with its own in-territory retail pricing for equivalent services (in both residential and business markets) demonstrates that the current xDSL wholesale commercial practice of Verizon leads to systematic price squeeze.

19. The present intervener questions what good would arise from forbearance given the fact that under the current rules; which albeit do see Verizon provide DSL resale pursuant to tariff, absent of pressure from the FCC, Verizon has failed to bring its DSL tariffs at levels that can be considered to be just and reasonable.

CONCLUSION & THE BIGGER PICTURE

20. I submit that it is at best premature, if not outright grossly improper, for Verizon to attempt to game the regulatory process by short-cutting the current Brand-X judicial review process through the present petition.

21. I further note that in WC Docket 04-29, the FCC postponed responding to the petition filed by SBC Communications Inc. (SBC) on February 5, 2004, requesting forbearance from application of Title II common carrier regulation to networks relying on the Internet Protocol (IP), the capabilities and functionalities of those networks, and services and applications utilizing those networks to facilitate communications (collectively, “IP Platform Services”).

22. I note that the FCC, by postponing making a decision, has effectively prevented SBC to game the regulatory process by requesting forbearance for IP-enabled services in advance of the FCC rendering a decision in WC 04-36 (IP-enabled Services NPRM), but in the same manner, has created the expectation in the market that the Commission would soon be ready to issue a decision in the WC 04-36 (IP-enabled Services NPRM).

23. I submit that the matters in Dockets 02-33 and 04-36 must not be given a priority over yet another attempt to seek forbearance that is not backed by a complete judicial review or irrefutable evidence of the absence of market power.

24. I further submit that in order for the FCC be prepared to grant the petition of Verizon, it is statutorily required to launch an inquiry into its market power through a public notice process

25. The renewed pro-competitive regulatory activity of the CRTC is at odds with the converse course of action that the FCC is taking.

26. It is clear that the FCC is statutorily bound to promote sustainable competition. I submit that it is also fair to say that sustainable competition cannot in the duopoly wireline broadband environment that prevails today unless regulations are maintained.

27. As a CRTC Commission recently said in a recent dissenting statement, *the regulatory bargain is a construct of objectivity and the introduction of subjectivity contributes to the unraveling of such bargain.*

28. The present intervener understands the regulatory bargain under the current FCC administration as being based on the potential neutralization of ILEC and MSO market-power by way of inter-modal competition coming from other technologies being allowed to come into existence by way of FCC initiatives such as relaxing power restrictions in the ISM bands & allowing new technologies such as IEEE 802.22 (Cognitive broadband radio in the off-the-air TV bands) as well as Broadband over Power Lines to reach consumer price points rapidly.

29. Despite the best Commission intentions, Economic theory is still clear about the fact that competitive entry in the telecommunications industry under the current incarnation of the regulatory bargain can only occur in a context where new entrants have lower incremental costs than the incumbents. This is explained by the fact that the imputation test governing anticompetitive incumbent behavior is based on incumbent below-cost pricing being benchmarked against incumbent incremental costs. While this may sound complex, such activity is in fact at the heart of recent Decisions from the CRTC regarding dark-fibre price floors (CRTC Decisions 2003-58 & 2003-59).

30. Under the present incarnation of the regulatory bargain, new entrants are required to be self-disciplined and to finance their competitive entry from the proceeds generated from services making use of unbundled network elements. It is the lack of such discipline which is responsible for the Telecom Crash of 2000 and investors have learned it the hard way, hence their reluctance to further finance competitive entry until the FCC issues decisions in WC 02-33 and WC 04-36.

31. The speeds achievable on increasingly faster wireline broadband are expected to reach levels of 26 mbps on twisted pair ILEC copper (using ADSL2+ FTTN) and 30 mbps coaxial MSO copper (using DOCSIS 2.0/3.0) by the end of 2006.

32. It is also probable that, despite today's announcement of SBC, that American ILECs will soon be seen readjust their statements about deploying FTTH and actually reveal that for every dollar invested in FTTH, they will actually spend 10 times more money on deploying ADSL2+ from their JWI/SAC boxes, much in the same manner than BCE's announcement of December 15th 2004 as its Business Review 2005 conference, where it announced:

Bell Canada has announced today that it would invest C\$1.2B over the next four years to provide ADSL2+ coverage by 2008 to 85% of the population (4.3M households) in the Windsor, ON to Quebec City, QC corridor (with 2.1M households achieved by 2006) pushing fiber to 1-1.2KM of the customer. This means that a whole lot of JWIs/SACs are going to get upgraded to either of ADSL2+ for residential or VDSL for MDUs in Canada.

Bell Canada says that it is the one which has led the development of the Lucent OPI-DSLAM technology and claims that it is two-years ahead of the technology, feeding DC power over copper loops that Bell Canada considers that is generally in good shape. Bell Canada says the cost per home passed will be C\$170 per home passed, with CPE below C\$500.

Bell Canada says that with ADSL2+ Multicast, they will be able to achieve one HDTV + two standard definition channels, running simultaneously with VoIP and Internet access. Bell Canada has announced that it would use the Microsoft IP-TV platform.

http://www.bce.ca/en/news/eventscalendar/webcasts/2004/20041215/05_wireline_1up.pdf

33. While one cannot openly accuse (yet) ILECs for failing to deliver on their promise to deploy FTTH to as many people as 18 million households by 2008 (such as in the announcement of SBC today)⁶, the present intervener would caution the Commission that this may end-up to be another simple flash in the pan set to to obtain further concessions from the Commission and to detract the Commission from figuring out a way to see Competition reach the 80% of the American population that already has access to broadband today.

⁶ At the heart of the U-verse portfolio is Project Lightspeed, the company's previously announced approximately \$4 billion initiative to deploy fiber to 18 million households across 13 states by the end of 2007, <http://www.sbc.com/gen/press-room?pid=5097&cdvn=news&newsarticleid=21541>

34. What is certain is that any Wireless or BPL technology will continue to lag several years behind wireline technologies well into the future. This may actually be told of DOCSIS as well, threatening the market share of the cable carriers. All of these factors should normally be enough to convince the FCC to regulate based on current assessment of market share and market power, rather than based on an elusive future of inter-modal competition.

35. The FCC has to accommodate the fact that the potential solution to achieving facilities-based competition may be to allow a third entrant such as end-users owned networks (school boards, municipalities) to directly invest into better infrastructures than those based on copper and to ensure that this third entrant is protected from anticompetitive below-cost targeted promotions coming from the established incumbent carriers fighting out their duopolistic death match.

36. I urge the Commission to pay more attention to what is presently happening in Quebec with the Villages Branchés program and trust that the Commission will take into consideration the fact that it may be its own inaction which is responsible for failure of opportunities developing to see massive investments in dark fibre infrastructures reaching out to Rural America.

37. What is certain is that under the current *status quo*, FCC inaction is what promotes the standstill of the telecommunications industry in America and for all of the aforementioned reasons, I submit that the FCC should deny the petition as Verizon.

Respectfully submitted,

/s/

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